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**SUBJECT: FEDERAL LEGISLATIVE UPDATE**

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**POLICY ISSUE:** Congress, the Administration, and federal agencies each year approve actions that impact the City in a broad range of areas. Staff may recommend, and/or Council may wish to direct, communication to the City's Congressional delegation on a range of issues throughout the year.

**DIRECTION NEEDED FROM COUNCIL:** This briefing provides information on the current activities of Congress. The information comes from reports from various federal sources and lobbying groups.

**BACKGROUND:**

**Congress Votes to Raise the Debt Ceiling.** On February 11, the U.S. House voted 221-201 to raise the debt ceiling—the government's borrowing limit—until March 15, 2015. A day later, the U.S. Senate followed suit in a 55-43 vote. This action by Congress extends the government's borrowing authority for another year, allowing it to borrow more money to pay for the more than \$17 trillion in federal spending that has already been approved. This is the first time in three years that this issue has been resolved without brinksmanship or demands for concessions for its approval. Treasury Secretary Jack Lew had warned that the government would likely start running short of money to pay its bills by the end of February without Congressional action. That could cause a default that could hurt the economy and result in a downgrade in the U.S. credit rating, which could increase the cost of additional borrowing.

**President Obama Signs Farm Bill.** On February 7, President Obama went to the campus of Michigan State University in East Lansing, Michigan (which some consider "the nation's pioneer land-grant university") to sign the farm bill. The \$1 trillion, five-year bill reauthorizes most rural development and nutrition assistance programs through fiscal year 2018. The Congressional Budget Office estimates that the bill will increase spending by \$228 million through FY 2023 on rural community development and infrastructure programs, as well as programs to improve access to credit for small business. Among other programs, the bill establishes a new Healthy Food Financing Initiative within the US Department of Agriculture to provide grants, loans and technical assistance for projects in severely distressed communities that improve access to healthy, regionally and locally sourced foods, and authorizes funding for state to establish pilot jobs programs for food stamp recipients.

Significantly, the measure, a compromise negotiated by a bipartisan group of House and Senate members, ensures that every household currently receiving food stamps may continue to do so, as long as they meet income eligibility requirements. This contrasts greatly to an earlier proposal under which 3.8 million people would have lost their benefits. However, because the compromise includes \$8.6 billion in cuts over 10 years, the actual benefits for a small number of households (about 4%) will be reduced each month by up to \$90.

**Congress Votes to Restore Cuts in Military Pensions.** On February 12, both chambers voted to restore full cost-of-living pension increases for younger military retirees, that some have described as a “bipartisan capitulation” to veterans groups that protested against a modest cut enacted less than two months ago. Under the legislation that passed in December, annual cost-of-living increases for veterans 62 years old and younger would have been held to one percentage point below the rate of inflation, beginning in 2015.

Savings to the government under the original bill were estimated at \$7 billion over 10 years. However, critics maintained that the cost to individual veterans would be many thousands of dollars over their lifetime. The bill is headed to the President for signature, and includes only those already in the service. Newcomers to the military would still have their cost-of-living increases held below the rate of inflation when they begin retirement, in 20 years or more. The bill’s passage underscored the difficulty Congress faces when it tries to restrain government benefit programs.

**Net Neutrality Legislation Introduced.** On February 3, Senator Ed Markey (D-MA) and Rep. Henry Waxman (D-CA) introduced the Open Internet Preservation Act of 2014. (S. 1981 and H.R. 3982). The legislation would restore the Federal Communications Commission’s (FCC) “net neutrality” rules, which the U.S. Court of Appeals for the District of Columbia Circuit overturned in a decision released January 14. If approved, the legislation would restore the regulations, adopted in the FCC’s 2010 Open Internet Order, until the FCC takes new, final action in the proceeding. In support of the legislation, Rep. Waxman stated: “Our bill very simply ensures that consumers can continue to access the content and applications of their choosing online. The FCC can and must quickly exercise the authorities the D.C. Circuit recognized to reinstate the Open Internet Rules.”

Passage of the legislation is unlikely, however, in the face of stiff Republican opposition Rep. Greg Walden (R-OR), chairman of the House Commerce Subcommittee on Communications, stated: “This proposal will certainly be a part of the discussion as we work toward a CommActUpdate. However, we remain vigorously opposed to any attempt to install the FCC as the traffic cop of the Internet. Innovation, job creation, and consumer choice have all flourished without so-called net neutrality rules, and a departure from that framework would certainly put American leadership in communications and technology in jeopardy.”

**FCC Process Reform Legislation Introduced.** On February 4, Senator Dean Heller (R-NV) introduced the *Federal Communications Commission Process Reform Act of 2014*. The bill is intended to make processes at the FCC more transparent and efficient by requiring the FCC to take certain steps, including: surveying the state of the marketplace through a Notice of Inquiry before initiating rulemakings; preventing the regulatory overreach by requiring any conditions imposed on transactions to be within the FCC’s existing authority and be tailored to transaction-specific harms; and establishing “shot clocks” so that parties know how quickly they can expect action in certain proceedings. The House Energy and Commerce Committee approved similar legislation earlier this year.

**President Obama’s State of the Union Address.** On January 28, President Obama delivered his fifth State of the Union Address before a joint session of the 113th Congress. In setting forth his priorities for the remainder of the year, he emphasized the theme of expanding equality of opportunity for all Americans. He urged Congress to make this a “year of action.” In calling on Congress to adopt measures to help ordinary people get ahead in life and overcome barriers to social mobility, he proposed, among other initiatives, expanding low-income tax credits, ensuring that women receive equal pay in the workplace, expanding educational opportunities through traditional means as well as new initiatives to connect businesses and universities, creating a new retirement savings vehicle (the “MyRA”), increasing the minimum wage, and

otherwise helping to promote good, middle-class jobs. He threatened to veto an Iran sanctions bill that would derail the negotiations underway to resolve “one of the leading security challenges of our time without the risk of war.” Finally, he made it clear that he intends to move initiatives by Executive Order, where possible, and otherwise take unilateral action to advance his agenda if Congress fails to respond with legislation, starting with an Executive Order that will increase the minimum wage to \$10.10 for individuals working on new federal contracts for services.

In the Republican Response, Representative Cathy McMorris Rodgers (R-WA), the Chair of the House Republican Conference and the most senior female member of the House Republican Leadership, also stressed the importance of helping individuals and families by offering a Republican vision: “That empowers you, not the government. It’s one that champions free markets—and trusts people to make their own decisions, not a government that decides for you. It helps working families rise above the limits of poverty and protects our most vulnerable. And it’s one where Washington plays by the same rules that you do. It’s a vision that is fair and offers the promise of a better future for every American. Because our mission—not only as Republicans, but as Americans, is to once again ensure that we are not bound by where we come from, but empowered by what we can become. That is the gap Republicans are working to close. It’s the gap we all face: between where you are and where you want to be.”

The remarkably similar themes put forward by President Obama and Representative McMorris Rogers and the stark differences in how they would accomplish their goals, Congress may surprise the skeptics by moving forward to produce bipartisan legislation on many significant matters, including advancing immigration reform, a water infrastructure bill, a surface transportation bill, terrorism risk insurance legislation, cyber security legislation, and the Marketplace Fairness Act. During his address, President Obama surprised the patent bar when he called on Congress to “pass a patent reform bill that allows our businesses to stay focused on innovation, not costly, needless litigation.” Senate Judiciary Committee Chairman Patrick Leahy (D-VT), Chairman Bob Goodlatte (R-VA), and Senator Chuck Schumer (D-NY) thanked the President and showed renewed optimism for swift movement on patent reform legislation.

Congress has shown it could achieve consensus on major issues. In December, for example, under the leadership of Senator Patty Murray (D-WA) and Representative Paul Ryan (R-WI), Congress reached agreement on a two-year budget bill that, among other things, blunted the impact of sequestration by increasing spending by \$63 billion over current law in 2014 and 2015. In January, under the leadership of Senator Barbara Mikulski (D-MD) and Representative Hal Rogers (R-KY), Congress produced a \$1.012 trillion, 1,524-page omnibus spending bill that will fund the government through the end of the fiscal year. Notably, the legislation included full-year funding for each of the twelve appropriations bills, as Congress agreed on even the most controversial bills, such as Labor-HHS, without resorting to a continuing resolution to essentially maintain the status quo. Whereas the December budget agreement had set overall spending levels for the balance of the fiscal year, this massive legislation spelled out where the dollars will be spent over the balance of the fiscal year. As importantly, approval of the legislation with broad, bipartisan support signaled the beginning of a return to “regular order,” a process by which Congress makes policy and spending decisions by moving separate appropriations measures rather than a simple Continuing Resolution that essentially preserves the status quo. Moreover, the opportunity for project-specific funding as part of the legislation should help move bills in the future. With the FY 2014 omnibus appropriations bill having come together, Senate and House appropriators will seek to build on this momentum by endeavoring to move each of the dozen FY 2015 appropriations bills by regular order this year, with project-specific funding providing a helpful measure of “grease” to keep the cogs of legislating move more smoothly.

Many Congressional observers believe the Ryan-Murray budget bill and ensuing Rogers-Mikulski omnibus appropriations bill represented solid efforts that will not soon be forgotten. In

recent years, many have come to expect partisan gridlock to stand in the way of legislating, with the specter of government shutdowns and debt defaults constantly looming. But split control is not fatal.

In 1996, for example, two years after the Republican Revolution of 1994, with Republicans in control of both houses of Congress, President Clinton signed into law the Telecommunications Act of 1996, which deregulated and reformed communications policy provisions first enacted during the New Deal, after the legislation cleared Congress with overwhelming bipartisan support. After vetoing the first two Republican efforts to revamp the federal welfare system, President Clinton also signed into law the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which had passed with strong bipartisan majorities in both chambers (78-21 in the Senate and 328-101 in the House). In 2000, President Clinton persuaded Congress to extend Permanent Normal Trade Relations to the People's Republic of China, with strong bipartisan support in the Senate (though with only limited Democratic support in the House). (By comparison, with President Obama having asked Congress to extend Trade Promotion Authority, which lapsed in 2007, he will need broad Republican support in both houses to prevail.)

More recently, there were glimmers that the process was again at work in the 112th Congress, which adopted and sent to the President:

- A major surface transportation bill to support highway construction and mass transit projects.
- The RESTORE the Gulf Coast States Act of 2012 to allocate billions of dollars in Clean Water Act fines from the Deepwater Horizon spill to restore the environment and the economic health of the Gulf Coast region.
- The FAA Modernization and Reform Act, which provided the agency with \$63.4 billion through 2015, including approximately \$11 billion to fund the agency's Next Generation air traffic control system.
- Legislation to address the fiscal cliff and staved off a massive increase in middle class taxes.

There is reason for some optimism this year given the electoral stakes in 2014 and the potential for lingering fallout from the government shutdown. Republicans in particular will want to demonstrate that they are capable of governing both by eschewing another shutdown and by moving legislation that can be signed into law. More generally, Congressional incumbents need to show they can make some progress on the key issues confronting the nation before the November elections. A recent Washington Post-ABC News poll found that only 16% of Americans approve of the job Congress is doing (while the President's approval stood at 46%). The pollsters found "anti-incumbency near the almost 25-year high it hit in October, with just 27 percent inclined to re-elect their representative in Congress. And while the Republican Party holds a crucial seven-point lead over the Democrats in trust to handle the economy, it also has problems of its own, on empathy, helping the middle class and related issues such as raising the minimum wage and extending unemployment benefits." Republicans will try to demonstrate they have solutions this year to build public confidence for complete GOP control of Congress after this election.

Much needs to be done to boost the economy and address the concerns of the American public, including measures aimed at addressing income inequality. The President hasn't been alone in talking about the subject. Senators Marco Rubio (R-FL), Rand Paul (R-KY), and Mike Lee (R-UT), as well as Representative Paul Ryan (R-WI), all have made important speeches focusing on the subject. They have different ideas than the President about how to address the issue, but there may be areas on which they can find common ground to address the needs of the people who elected them.

Beyond the high-profile, partisan issues, such as defunding Obamacare and mandating approval of the Keystone XL pipeline, a host of major issues are now keyed up for Congress to address. As the leaders of the Budget and Appropriations Committees have shown recently, Congress is capable of getting big things done.

**IMMIGRATION REFORM.** Many observers expressed the view that Congressional action on one or more bipartisan bills on comprehensive immigration reform was a virtual certainty in 2013. The Senate was able to approve a comprehensive bill last July by a strong, bipartisan vote of 68-32. Now, there are the outlines of a path by which the House could address important aspects of immigration reform and both could work together to get legislation to the Rose Garden by the end of the year. While there have been several bills on this issue over the past decade, all have reached a dead end.

What has changed in the landscape is that the American public is ahead of Congress in supporting change. As a result, state legislatures and governors in 45 states, including both blue and red states, have been active in advancing immigration reform measures, with 184 laws and 253 resolutions having been adopted in 2013 alone. Eight states, for example, adopted legislation extending driver's license eligibility to unauthorized residents and four states expanded in-state tuition for unauthorized immigrant students, bringing to fifteen the number of states that offer in-state tuition through legislation. Eleven states adopted resolutions urging Congress to address comprehensive reform. On Capitol Hill, broad sectors of the business community have continued to push for legislation as a means of promoting economic growth. From employers wanting to hire the best STEM graduates or to those who want to employ farm workers legally, broad consensus exists about the need to do something, and soon.

In his State of the Union Address last year, President Obama reiterated the broad principles that he believes should guide the debate in achieving what he described as "real reform" to current law: "Strong border security, [building] on the progress my Administration has already made—putting more boots on the southern border than at any time in our history, and reducing illegal crossings to their lowest levels in 40 years . . . a responsible pathway to earned citizenship—a path that includes passing a background check, paying taxes and a meaningful penalty, learning English, and going to the back of the line behind the folks trying to come here legally . . . [and] fixing the legal immigration system to cut waiting periods, reduce bureaucracy, and attract the highly-skilled entrepreneurs and engineers that will help create jobs and grow our economy. "

In his 2014 address, the President called on the House to move a bill, but he did not get into specifics as he had last year. Instead, he said in relevant part: "If we're serious about economic growth, it is time to heed the call of business leaders, labor leaders, faith leaders, law enforcement—and fix our broken immigration system. Republicans and Democrats in the Senate have acted. And I know that members of both parties in the House want to do the same. Independent economists say immigration reform will grow our economy and shrink our deficits by almost \$1 trillion in the next two decades. And for good reason: When people come here to fulfill their dreams—to study, invent, contribute to our culture—they make our country a more attractive place for businesses to locate and create jobs for everybody. So let's get immigration reform done this year. "

Last year, House committees produced five separate immigration reform bills, none of which has yet to be considered by the full House and none of which addresses the most polarizing issue separating the two political parties: determining a pathway to citizenship. The House Republican leadership has ruled out the "comprehensive" Senate bill, including the Senate's approach to resolving the citizenship issue: a minimum 13-year pathway to citizenship for most current undocumented immigrants. But talks are underway to find alternative ways to address

the issue, and potentially linking it with border security measures that would gain bipartisan support. Because it triggers extremely different views and ultimately touches every American of every political persuasion, immigration reform will be politically hard to achieve. Nonetheless, we remain optimistic that Congress will approve immigration reform legislation this year.

**TAX POLICY.** In his speech, President Obama again called on Congress to enact comprehensive corporate tax reform legislation that would raise revenue for infrastructure spending and would “close those loopholes, end those incentives to ship jobs overseas, and lower tax rates for businesses that create jobs right here at home.” In addition, the President announced he will direct the Treasury Department to create a new retirement savings product called a “MyRA,” which he billed as a starter retirement savings account that “encourages folks to build a nest egg.” The White House has indicated that the program will be offered through a Roth IRA and backed by the government, similar to savings bonds.

Last year, the tax writing committees discussed the need for comprehensive tax reform in a multitude of hearings. Ultimately, though, the committees had little to show by way of tangible legislation, with just three minor tax bills enacted into law. Instead, 2013 was more notable for the tax reform “road show” of Chairmen Dave Camp (R-MI) and Max Baucus (D-MT), as well as the formation of various tax working groups, the release of wide ranging tax reform options papers and specific working drafts. As Chairman Baucus departs for Beijing (where he will serve as U.S. Ambassador to China), the Finance Committee will be chaired by Senator Ron Wyden (D-OR), who, like Chairman Baucus, has a deep interest in tax reform and a history of working in a bipartisan and bicameral manner to achieve results. Ways and Means Committee Chairman Camp still intends to introduce and mark up tax reform legislation in the coming months, but the path forward is uncertain due to deep ideological differences over fundamental goals.

Republicans continue to want to restructure the Internal Revenue Code on a revenue neutral basis, while Democrats would like to use tax reform to raise revenue for other priorities, including infrastructure spending and deficit reduction. While discussions will no doubt continue on tax reform, the Senate is likely to focus on and quickly move legislation resuscitating expired tax “extenders”—the litany of provisions that expire on a year-to-year basis affecting both individuals and corporations. These include, for example, the R & D tax credit, the active financing exception, and a variety of energy credits. Ways and Means Chairman Camp has not yet indicated that he is prepared to take up tax extender legislation, but there will be increased pressure to do so as the year progresses.

**FINANCIAL SERVICES.** The President highlighted various economic growth and job creation success stories in struggling communities such as Detroit. His remarks follow the Promise Zones Initiative he announced in his address last year. Of note, on January 9, 2014, the Obama Administration announced the first five of twenty “Promise Zones,” located in San Antonio, Philadelphia, Los Angeles, Southeastern Kentucky, and the Choctaw Nation of Oklahoma. The President voiced support for housing finance reform and encouraged Congress to “send me legislation that protects taxpayers from footing the bill for a housing crisis ever again, and keeps the dream of homeownership alive.” As stated in his SOTU Fact Sheet released by the White House, President Obama’s goals for housing reform include: Putting private capital “at the center of the housing finance system; ending the GSE’s “failed business model;” ensuring access to responsible mortgages, such as the 30-year fixed rate mortgage; supporting “affordability” and access to affordable rental housing.

The Administration has been working with Senate Banking Committee on legislation to reform the Government-Sponsored Enterprises (GSEs). Additionally, there are already competing bills in the House. House Financial Services Committee Chairman Hensarling’s GSE reform bill, the PATH Act (H.R. 2767), differs significantly from the recently announced GSE reform proposal by Democratic Representatives John Delaney (D-MD), John Carney (D-DE), and Jim Himes (D-

CT). According to Michael Stegman, Treasury Secretary for Housing Finance Policy, “[w]e are hopeful that comprehensive, bipartisan housing finance reform is achievable this year.”

**HEALTH POLICY.** Not surprisingly, the President did not dwell on health policy in his remarks, other than to emphasize what he sees as the parts that are working and encouraging Republicans to work with him to address problems that have emerged rather than passing yet-another Obamacare repeal bill. After the disastrous roll-out of the federal health insurance exchange in late 2013, an experience that was shared by some of the state exchanges, the Obama Administration will be working hard to ensure that technical improvements to the data systems supporting exchange operations continue into the remainder of the initial open enrollment period that ends March 31, 2014.

The Administration also will continue its push for the enrollment in the exchanges of healthy young adults, in order that the risk incurred by plans with large numbers of chronically ill older adult enrollees can be adequately assumed. Final enrollment figures for the open enrollment period will be available in early spring and are very likely to be well under the most conservative initial estimates. The Administration has declared that the exchanges are succeeding in reducing the numbers of uninsured, but these pronouncements have been countered by analyses that show that others have lost coverage due, for example, to decisions employers have made to cease providing health insurance for their part-time workforce.

Congressional Democrats will continue to block efforts to undo the fundamental components of Obamacare by “repeal-and-replace” legislation, although the Administration may allow further slippage in some of the Affordable Care Act’s key implementation dates (e.g., including rigorous enforcement of the individual mandate—or even temporary relief from penalties—and the January 2015 start of the employer mandate). In addition, the President’s focus on generating new manufacturing and job creation by bringing jobs home could bolster the medical device tax repeal effort, which enjoys significant bipartisan support.

The Supreme Court will rule on whether private companies owned by those who have religious objections to certain forms of contraception coverage required under the ACA can eliminate coverage for those services from the plans offered to their employees. There also are other cases under appeal in the lower courts that challenge the provision of subsidies to eligible individuals obtaining insurance through the federal exchanges.

Congress has pursued the opportunity for a bipartisan and bicameral solution to the lingering impact of the Sustainable Growth Rate (SGR) formula on physician payments by tying future compensation to physicians’ achievement of certain quality metrics. Committee leaders are struggling to identify sufficient offsets to cover the cost of comprehensive SGR reform. If agreement isn’t reached by March 31, Congress will need to adopt another short-term “fix.” The Centers for Medicare and Medicaid Services (CMS) also will be closely tracking the initial impact of various payment reform demonstrations that it is funding on actual costs of care, looking for models to implement nationwide to reduce Medicare and Medicaid costs, particularly for those with multiple chronic conditions.

**GOVERNING VIA EXECUTIVE ORDER.** In the coming year, as in prior years, the President is likely to put pens to work issuing Executive Orders as a means of addressing issues Congress will not or cannot address. In 2012, for example, he issued an Executive Order when Congress did not approve the DREAM Act. Last year, he issued an Executive Order on cyber security that called for the creation of voluntary standards to enhance the security of critical infrastructure and improve the government’s ability to deter attacks, while again urging Congress to adopt a more comprehensive legislative approach. In his State of the Union Address last year, he was quite explicit in saying that if Congress did not address climate change, he would “direct my Cabinet to come up with executive actions we can take, now and in the future, to reduce

pollution, prepare our communities for the consequences of climate change, and speed the transition to more sustainable sources of energy.” In June, with Congress having not acted, he directed the Environmental Protection Agency to begin implementing major elements of his “Climate Action Plan” by setting tough new limits on CO2 emissions by new power plants and by working with state regulatory authorities to cut emissions from existing power plants. In advance of the President’s speech, the White House announced that the President intended to work with Congress to pass legislation that would increase the minimum wage and then index it to inflation. During his address, the President made it clear that he would soon issue an Executive Order to increase the minimum wage to \$10.10 for individuals working on new federal contracts for services.

In addition to making the minimum wage announcement, he also made it clear that he intends to continue issuing Executive Orders to advance his agenda this year, while offering a willingness to work with Congress. For example, he said: “I will direct the Treasury to create a new way for working Americans to start their own retirement savings: MyRA . . . a new savings bond that encourages folks to build a nest egg. MyRA guarantees a decent return with no risk of losing what you put in. And if this Congress wants to help, work with me to fix an upside-down tax code that gives big tax breaks to help the wealthy save, but does little or nothing for middle-class Americans, offer every American access to an automatic IRA on the job, so they can save at work just like everybody in this chamber can. ”

In those areas in which the President intends to move by Executive Order either directly or by directing agency action, such as EPA’s efforts to advance his climate change initiative, some have expressed skepticism that his doing so will lead Congress to act. As a result, the courts—rather than Congress—will serve as the check on the scope of the President’s ability to act unilaterally. In the end, Democrats and Republicans can find common ground on many issues, and the President will act unilaterally where they can’t do so by producing legislation.

**THE AMERICAN VOTING EXPERIENCE.** In his State of the Union Address last year, the President announced that he would be establishing a commission with a mandate “to identify non-partisan ways to shorten lines at polling places, promote the efficient conduct of elections, and provide better access to the polls for all voters.” In January, the commission presented its report to the President. The commission unanimously concluded that “problems that hinder the efficient administration of elections are both identifiable and solvable,” and put forward recommendations to ensure that no voter should have to wait more than 30 minutes to cast a ballot. In his address, the President said in part: “Citizenship means standing up for everyone’s right to vote. Last year, part of the Voting Rights Act was weakened, but conservative Republicans and liberal Democrats are working together to strengthen it. And the bipartisan commission I appointed, chaired by my campaign lawyer and Governor Romney’s campaign lawyer, came together and have offered reforms so that no one has to wait more than a half hour to vote. Let’s support these efforts. ”